REMARKS

In the Notice, the Examiner withdrew claims 92-97 from consideration as being directed to a non-elected invention. By this Reply, Applicant cancels claims 92-97 without prejudice or disclaimer and presents new claims 98-104.

Applicant thanks the Examiner for the interview of December 16, 2009 regarding the Notice. During the interview, Applicant submitted that claims 92-97 were not mutually exclusive from claims 78-91.

In order to expedite prosecution, Applicant has canceled claims 92-97 and presented new claims 98-104. New claims 98-104 are similar to originally presented claims 78-91 but have been amended to clarify the claim language.

Due to the cancelation of claims 92-97, Applicant submits that the double patenting rejection presented in the Office Action mailed February 13, 2009 is now moot. Applicant further submits that new claim 98 is not co-extensive in scope with any of the claims of the '098 Application (now U.S. Patent No. 7,584,019). Specifically, claim 98 recites, for example:

> A method of for adaptively scheduling robot tasks for a robot coupled to a stainer, wherein the robot processes slides in the stainer according to a protocol, the method comprising the steps of:
> introducing a first at least one slide into the stainer, the stainer being configured to process the first at least one slide using a plurality of desired slide process operations comprising one or more robot tasks;
> creating a robot task list of the one or more robot tasks for the stainer;
> processing the first at least one slide according to the robot task list;
> during processing of the first at least one slide according to the robot task list, receiving a second at least one slide into the stainer; and

> adaptively rescheduling the robot tasks of the robot
> task list to create an altered robot task list of the one or more
> robot tasks for the stainer.

In contrast, claim 1 of the '098 Application, recites:

> A method comprising steps for adaptively scheduling
> robot tasks in a time interval for a robot coupled to a stainer,
> wherein the robot treats slides coupled to the stainer
> according to a treatment protocol with reagents in reagent
> bottles or fluid containers coupled to the stainer, the steps
> comprising:
> > creating a robot task list comprising all robot tasks
> that are ready for execution within the time interval;
> > calculating a robot task priority for each robot task in
> the robot task list;
> > sorting the robot task list in descending order of robot
> task priority; and
> > adding robot tasks starting from the top of the sorted
> robot task list to a robot task execution queue until the robot
> is fully utilized in the time interval or the robot task list is
> exhausted.

Accordingly, Applicant submits that the independent claim 98 is not coextensive in scope with independent claim 1 of the '098 Application. Claim 98 of the present application is therefore allowable. Claims 99-104 are allowable at least by virtue of their dependence from claim 98 and due to their additional recitations of patentable subject matter. Accordingly, Applicant respectfully requests withdrawal of the rejection.
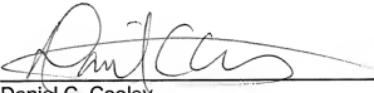
In view of the foregoing, Applicant submits that this claimed invention, as amended, is allowable. Applicant therefore requests the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

If there is any fee due in connection with the filing of this Amendment, please charge the fee to Deposit Account No. 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Date: December 23, 2009

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